

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENT  
Issued to: Milton ARMSTEAD, Jr. 439 44 0328-D9

DECISION OF THE COMMANDANT ON APPEAL  
UNITED STATES COAST GUARD

2462

Milton ARMSTEAD, Jr.

This appeal has been taken in accordance with 46 U.S.C. SS7702 and 46 CFR SS5.701.

By order dated 12 June 1987, an Administrative Law Judge of the United States Coast Guard at New Orleans, Louisiana, revoked Appellant's Merchant Mariner's Document upon finding proved the charge of conviction for a narcotic drug law violation. The charge was supported by two specifications. The specifications found proved alleged that Appellant, being the holder of the captioned document, on or about 7 July 1982 and 18 November 1982, respectively, was convicted by the Criminal District Court for the Parish of Orleans, State of Louisiana for possession of marijuana in violation of the Revised Statutes of Louisiana.

The hearing was held at New Orleans, Louisiana, on 18 March, 29 April, and 9 June 1987.

Appellant appeared at the hearing with counsel, Harry Cantrell, Jr., Esq. Appellant entered an answer of no contest to the charge and specifications in accordance with 46 CFR SS5.527(a).

The Investigating Officer introduced in evidence two exhibits.

Appellant introduced no exhibits into evidence and called no witnesses. Appellant testified in his own behalf.

The Administrative Law Judge admitted two letters as Administrative Law Judge exhibits.

After the hearing the Administrative Law Judge rendered a

decision in which he concluded that the charge and specifications had been found proved on the basis of Appellant's answers, and entered a written order revoking all licenses and/or documents issued to Appellant.

The complete Decision and Order was dated 12 June 1987 and was served on Appellant on 22 June 1987. Appellant requested and was granted an extension of time to perfect his appeal. Appeal was timely filed and considered perfected on 15 September 1987.

### FINDINGS OF FACT

At all times relevant, Appellant was the holder of a Coast Guard Merchant Mariner's Document, No. 439 44 0328-D9.

On 7 July 1982, Appellant was convicted by the Criminal District Court for the Parish of Orleans, State of Louisiana for possession of marijuana in violation of the Revised Statutes of Louisiana on his plea of "guilty".

On 18 November 1982, Appellant was convicted by the Criminal District Court for the Parish of Orleans, State of Louisiana for possession of marijuana in violation of the Revised Statutes of Louisiana on his plea of "guilty".

### BASES OF APPEAL

Appellant raises the following issues on appeal:

- 1) The Administrative Law Judge was unfairly influenced by another hearing involving the Appellant.
- 2) In deciding appeals from suspension and revocation proceedings, the Commandant has discretion to change a revocation order to a lesser form of penalty.

Upon complete examination of the record, I, sua sponte, raise the following issue for review on the record:

- 1) What is the effect of a pardon under Louisiana law on the conviction for possession of marijuana for purposes of mandatory revocation under 46 U.S.C. 7704?

Appearance: Joe L. Horne, Esq.

## OPINION

### I

On 24 February 1987, a decision and order issued by Administrative Law Judge McElligott suspended Appellant's Merchant Mariner's Document for four months upon finding proved a charge of misconduct involving assault and battery. (Transcript at 11, 31, 32). Appellant asserts that as a result, in hearing the present case, Administrative Law Judge Boggs could not conduct himself in a neutral and detached manner, having been influenced by the previous case. This issue is not properly before me for resolution on appeal for two reasons.

This issue was not raised at the hearing where evidence and voir dire of the Administrative Law Judge by both sides could have resolved the matter. No motion to disqualify the Administrative Law Judge was made at the hearing. See Appeal Decision 1751 (CASTRONUOVO). Therefore, this issue cannot be raised for the first time on appeal. 46 CFR 5.701(b)(1). Appeal Decision 2376 (FRANK)

Finally, the issue was waived by Appellant's answers of no contest. It is clearly established that all non-jurisdictional defects and defenses are waived by provident answers. Appeal Decision 2385 (CAIN), *aff'd sub nom. Commandant v. Cain*, NTSB Order EM-125 (1985); FRANK, *supra*; Appeal Decision 2362 (ARNOLD); Appeal Decision 2268 (HANKINS); Appeal Decision 1203 (DODD). I have determined that Appellant's answers were providently made at the hearing.

### II

Appellant asserts that since the Commandant has discretion to approve an application for a new document, previously revoked under 46 U.S.C. 7704, pursuant to 46 CFR 5, Subpart L then the Commandant has discretion to reduce a revocation order to a lesser form of penalty in the original proceeding. I disagree.

A charge brought under 46 U.S.C. 7704 requires mandatory revocation upon proof of conviction of an offense involving marijuana. It is the role of the Commandant to review the Decision and Order of an Administrative Law Judge from a proceeding under 46 U.S.C. 7704 for legal errors in accordance with 46 CFR 5, Subpart J. There is no authority in statute or regulation for the Commandant to upset a

lawful and proper mandatory revocation order issued pursuant to 46 U.S.C. 7704. As the Administrative Law Judge explained to Appellant at the hearing (Trnscrip at 18-19) and, as noted above, 46 U.S.C. 7704 requires revocation upon proof of conviction of a dangerous drug law violation. Evidence of the intent of Congress in enacting this provision of 46 U.S.C. 7704 is found in the Report of the House Committee on Merchant Marine and Fisheries which accomanie s the bill, S.46:

Section 7704 requires the Secretary to revoke the license, certificate, or document of any hich accompanies the bill, S.46:

Section 7704 requires the Secretary to revoke the license, certificate, or document of any ARMSTEAD.

\*\*\*\*\* END OF DECISION NO. 2462 \*\*\*\*\*